

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**K.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POSTAL SERVICE,  
Staten Island, NY, Employer**

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**Docket No. 06-1361  
Issued: March 27, 2007**

*Appearances:*

*Thomas S. Harkins, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 30, 2006 appellant filed a timely appeal from an April 3, 2006 Office of Workers' Compensation Programs' merit decision which affirmed the denial of her recurrence of disability claim. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

**ISSUE**

The issue is whether appellant sustained a recurrence of disability on October 2, 2004 causally related to her accepted cervical condition.

**FACTUAL HISTORY**

Appellant, a 34-year-old letter carrier, injured her neck on September 30, 1999 while lifting a tray. She filed a claim for benefits, which the Office accepted for cervical strain. She received compensation for medical treatment and returned to work the following day, October 1, 1999, on limited duty as a modified letter carrier.

In a Form CA-17 duty status report dated October 1, 1999, appellant's treating physician, Dr. Allan Perel, Board-certified in psychiatry and neurology, outlined restrictions of no lifting or carrying, intermittent standing for three hours per day, intermittent walking for five hours per day, and intermittent climbing, kneeling, bending/stooping, twisting, pulling, pushing, reaching above the shoulder and driving a vehicle. A December 29, 1999 limited-duty assignment description indicated that appellant's modified job, which was tailored to Dr. Perel's restrictions, entailed the following job duties: casing mails, updating forward cards at carrier cases, labeling carrier cases, performing various support duties including mark-up or nixie services, answering customer inquiries, addressing information for written court orders and requests, reviewing and disposing of waste mails and providing customer assistance by answering telephone inquiries. Appellant was released to an eight-hour workday.<sup>1</sup> In CA-17 forms dated December 24, 1999 and February 4, 2000, Dr. Perel stated that appellant could case mail and pull down her route but would be unable to case mail and lift heavy objects.

On October 13, 2004 appellant filed a Form CA-2a, claim for benefits, alleging that she sustained a recurrence of disability on October 2, 2004 causally related to her accepted cervical condition.

Appellant submitted two November 8, 2004 reports from Dr. Stephen A. Kulick, Board-certified in psychiatry and neurology. Dr. Kulick indicated that appellant underwent magnetic resonance imaging (MRI) scans of her cervical spine and upper extremities. He recommended physical therapy and advised appellant to remain off work until her condition was subsequently reassessed.

In a Form CA-20 report dated October 22, 2004, Dr. Perel stated that appellant had cervical radiculopathy at C4-5 in addition to a herniated disc at C4-5 as shown by MRI scan. He indicated that appellant was totally disabled and checked a box indicating that he believed that appellant's condition was caused or aggravated by her employment. In a November 2, 2004 form report, he reiterated the diagnosis of cervical radiculopathy and again checked a box indicating that he believed that appellant's condition was caused or aggravated by her employment.

By letter dated December 6, 2004, the Office advised appellant that it required additional factual and medical evidence, including a medical report, to support her claim that her current condition or disability as of October 5, 2004 was causally related to her accepted cervical condition. The Office asked appellant to submit evidence which showed that she could not perform the light duty she was performing at the time of her alleged recurrence of disability.

Appellant submitted a December 6, 2004 form report from Dr. Kulick in which he reiterated his previous findings and conclusions.

By decision dated January 14, 2005, the Office denied appellant's claim for a recurrence of her accepted cervical condition. The Office found that appellant failed to submit factual and

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<sup>1</sup> The job would not require appellant to perform lifting or carrying. She could case mail, without lifting buckets, and tie down one route per day. All other duties were "intermittent."

medical evidence sufficient to establish that her claimed condition or disability as of October 2, 2004 was caused or aggravated by the accepted condition.

By letter dated December 21, 2005, appellant's attorney requested reconsideration.

In a report dated November 8, 2004, Dr. Kulick reiterated his prior findings. He noted symptoms of neck pain radiating into the upper extremities, with weakness of the left upper extremity as well as numbness and tingling in both upper extremities. Dr. Kulick noted that the numbness and tingling had begun increasing in severity.

In a report dated March 4, 2005, Dr. Perel reviewed treatment of appellant following her October 1999 neck injury. He advised that an MRI scan of the cervical spine performed on October 25, 1999 demonstrated a cervical herniated disc at C4-5, which caused impingement upon the thecal sac. Dr. Perel noted that appellant was working at that time at a very light-duty capacity, with no lifting. He saw her periodically through October 2004, when she sustained her alleged recurrence of disability. Dr. Perel stated:

“[Appellant] was seen in follow up on October 6, 2004 describing severe increasing paraspinal muscle spasm in the cervical region and neck pain. She was using ice on a daily basis. This patient was not able to work and required multiple absences from work. Examination was notable for decreased range of motion on turning her head to the left by five degrees and right by five degrees. [Appellant] had decreased extension and flexion of the neck by five degrees from the norm. She also had decreased pinprick sensation in the left C5-C6 dermatome. In my impression, the patient had a cervical radiculopathy with decreased pain and spasm.”

Dr. Perel diagnosed cervical radiculopathy secondary to her herniated disc and recommended a follow-up cervical MRI scan due to the marked worsening of her symptomatology. He did not believe that she could continue to work as a postal worker, and noted that she had not been able to work full duty since he initially saw her in 1999. Dr. Perel stated that appellant currently was not able to work light duty because of severe numbness in her left arm, pain in her neck and paresthesias in her left hand.

By decision dated April 3, 2006, the Office denied modification of the January 14, 2005 decision.

### **LEGAL PRECEDENT**

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of disability. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.<sup>2</sup>

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<sup>2</sup> *Terry Hedman*, 38 ECAB 222 (1986).

A recurrence of disability is defined as the inability to work caused by a spontaneous change in a medical condition which results from a previous injury or illness without an intervening injury or new exposure in the work environment that caused the illness.<sup>3</sup>

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which she claims compensation is causally related to the accepted injury.<sup>4</sup> In addition, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.<sup>5</sup>

### ANALYSIS

Appellant's claim was accepted for a cervical strain. She has failed to submit sufficient medical opinion containing a rationalized, probative opinion which relates to her condition or disability as of October 2, 2004, diagnosed as a herniated cervical disc with radiculopathy, to her accepted cervical condition. For this reason, appellant has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment condition.

Dr. Kulick stated the results of diagnostic tests, recommended physical therapy and advised appellant to remain off work until her condition was subsequently reassessed. His reports, however, did not address the causal relationship between appellant's employment-related cervical strain and her alleged recurrence of disability of October 2, 2004. Dr. Perel's reports provided a diagnosis of appellant's current condition and indicated that she complained of disabling pain as of October 2, 2004. However, he did not provide a rationalized medical opinion on causal relationship to establish that appellant's disability as of October 2, 2004 was causally related to her accepted cervical strain.<sup>6</sup> Dr. Perel did not explain how the accepted soft tissue injury in 1999 would cause or contribute to the disc herniation first identified in 2004. Appellant failed to submit evidence to show that she sustained a worsening of her cervical condition and that she was totally disabled from all work after October 2, 2004, or that a change occurred in the nature and extent of the injury-related condition.<sup>7</sup> Further, appellant did not submit any evidence indicating that there was a change in the nature and extent of her limited-

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<sup>3</sup> See 20 C.F.R. § 10.5(x); *Donald T. Pippin*, 54 ECAB 631 (2003).

<sup>4</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

<sup>5</sup> For the importance of bridging information in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 738 (1986).

<sup>6</sup> *William C. Thomas*, 45 ECAB 591 (1994).

<sup>7</sup> Furthermore, the form reports from Dr. Perel that support causal relationship with a checkmark are insufficient to establish the claim, as the Board has held that, without further explanation or rationale, a checked box is not sufficient to establish causation. *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

duty assignment. Accordingly, the Office properly denied compensation for a recurrence of appellant's work-related cervical condition in its January 14, 2005 decision.

Following the January 14, 2005 decision, appellant submitted Dr. Perel's March 4, 2005 report. Dr. Perel advised that on October 6, 2004 appellant related severe increasing paraspinal muscle spasm in the cervical region and neck pain and was unable to work. On examination, appellant exhibited a decreased range of motion of the head and neck in addition to decreased pinprick sensation in the left C5-C6 dermatome. Dr. Perel diagnosed cervical radiculopathy secondary to a herniated disc with marked worsening of symptomatology. He opined that appellant was not able to work as a postal worker, even on light duty, due to severe numbness in her left arm, pain in her neck and paresthesias in her left hand.

Dr. Perel did not address the causal connection between appellant's employment-related condition and her alleged recurrence of disability. Causal relationship must be established by rationalized medical opinion evidence. Dr. Perel's report failed to provide an explanation of how appellant's cervical strain would cause or contribute to her disability as of October 5, 2004. While his report provided a diagnosis of appellant's current condition and noted that she complained of disabling cervical pain as of October 5, 2004, it did not provide a discussion of how appellant's accepted strain would cause or contribute to her worsening symptomatology or establish that her cervical disc herniation and disability as of October 5, 2004 was causally related to her accepted condition. Dr. Kulick's November 8, 2004 report stated findings of pain, weakness and numbness in the upper extremities on examination but contained no opinion as to whether these symptoms were causally related to the September 1999 injury. The Board finds that appellant failed to submit rationalized medical evidence sufficient to demonstrate that a change occurred in the nature and extent of the injury-related condition.<sup>8</sup>

In addition, the Board finds that appellant failed to submit evidence following the January 14, 2005 Office decision that there was a change in the nature and extent of appellant's limited-duty assignment such that she no longer was physically able to perform the requirements of her light-duty job. The record demonstrates that appellant returned to work on October 1, 1999 on light duty. Accordingly, as appellant has not submitted any factual or medical evidence supporting her claim that she was unable to perform her light-duty assignment as of October 5, 2004, as a result of her employment, she failed to meet her burden of proof. The Board therefore affirms the Office's April 3, 2006 decision.

### **CONCLUSION**

The Board finds that appellant has not met her burden to establish that she was entitled to compensation for a recurrence of disability as of October 2, 2004 causally related to her accepted cervical condition.

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<sup>8</sup> William C. Thomas, *supra* note 6.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 3, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 27, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board